

In the Matter of Merchant Mariner's Document No. Z-54486-D1 and all  
other Seaman Documents  
Issued to: ARTHUR PETERSON

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1339

ARTHUR PETERSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 5 October 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as second cook and baker on board the United States SS AFRICAN GLEN under authority of the document above described, on 16 January 1961, Appellant wrongfully cut third cook Wong with a knife; on 16 March 1961, Appellant was wrongfully absent from the ship and his duties without permission.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of third cook Wong, chief cook Eng and chief steward Carlo as well as excerpts from the Shipping Articles and an entry in the ship's Official Logbook pertaining to the knifing incident.

In defense, Appellant testified that he accidentally cut Wong with the knife when he kept moving very close to Appellant and asking what happened to the potatoes; Appellant could not return to the ship on 16 March due to lack of transportation.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of four months outright plus two months on twelve months' probation.

FINDINGS OF FACT

On 16 January and 16 March 1961, Appellant was serving as a

second cook and baker on the United States SS AFRICAN GLEN and acting under authority of his document while the ship was in the port of Monrovia, Liberia.

On the evening of 16 January, Appellant was in the galley using a long knife to prepare salad when third cook Wong approached and angrily demanded to know what had happened to the potatoes he had prepared. In an attempt to get Wong to stop bothering him, Appellant swung the knife toward Wong cutting him on the chin. Three stitches were taken in the wound. The chief cook was the only other person in the galley at the time.

On 16 March, Appellant failed to return on board to perform his assigned duties. He did not have permission to remain ashore on this date. Although the Master had not provided for transportation to the ship outside the breakwater, Appellant knew of this when he went shore on 15 March.

Appellant's prior record consists of an admonition in 1954 for failure to join and a two months' suspension in 1943 for assault and battery.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the findings of fact are against the weight of the evidence and the order is excessive.

The Examiner found that the chief cook saw Appellant cut Wong with the knife; but the chief cook testified that he saw no cutting and heard no argument. This supports Appellant's claim that he accidentally cut Wong.

Appellant did not return to the ship, anchored outside the breakwater, because no launch service was provided.

#### OPINION

The evidence supports the finding that Appellant was guilty of assault and battery. Neither the testimony of the chief cook nor the issue as to whether the cutting was an accident is material to this conclusion since Appellant admitted it occurred and the Examiner accepted Wong's testimony that Appellant swung the knife at Wong. Even if the injury was an accident in the sense that Appellant did not inflict it intentionally, the cutting was wrongful, and a battery, since it resulted from Appellant's reckless handling of a dangerous weapon. Appellant is responsible for the probable consequences of such conduct.

Regarding Appellant's absence from the ship, this was wrongful because he knew the transportation risk which was involved when he left the ship.

The order of the Examiner is not considered to be excessive for these offenses.

ORDER

The order of the Examiner dated at New York, New York, on 5 October 1961, is AFFIRMED.

E. J. Roland  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D. C., this 6th day of September 1962.